

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

SAM HAMDI MALHAS, )  
vs. Plaintiff, )  
vs. ) Case Number CIV-16-1440-C  
NANCY BERRYHILL, Acting )  
Commissioner of the Social Security )  
Administration, )  
Defendant. )

## **MEMORANDUM OPINION AND ORDER**

Having recently obtained a remand to the Commissioner for further proceedings, Plaintiff has filed a Motion for an Award of Attorney's Fees Under the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). Defendant objects to the fee request, arguing that her position was substantially justified. Defendant also notes that pursuant to Astrue v. Ratliff, 560 U.S. 586, 130 S.Ct. 2521, 2525-26 (2010), fee awards under the EAJA must be made to the party, not the attorney.

Defendant argues her position was substantially justified and therefore the request for EAJA fees should be denied. In determining that the ALJ had erred in denying Plaintiff benefits, Judge Mitchell noted the ALJ had failed to properly apply the treating physician rule by improperly making a speculative inference about what the physician's records did not contain. As Judge Mitchell noted, the ALJ's actions were clear error. On appeal, rather than acknowledge the error, Defendant asserted that the ALJ had acted

properly. This position was not substantially justified and did not, as suggested in the present objection, reflect a reasonable litigation action. Accordingly, Defendant's Objection to the fee request will be denied.

Defendant did not challenge the hours claimed or the requested hourly rate. Therefore, after consideration of Plaintiff's request and the relevant time entries, the Court finds Plaintiff's motion should be granted and that fees be awarded in the amount of \$7,456.19.<sup>1</sup> Defendant is directed to issue payment in accordance with the law and procedures set forth in its response brief. Additionally, in the event Plaintiff later requests and receives an attorney's fee award pursuant to 42 U.S.C. § 406(b), the smaller amount should be refunded to Plaintiff by his counsel. Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986).

As set forth more fully herein, Plaintiff's Motion for Attorney's Fees Under the Equal Access to Justice Act (Dkt. No. 25) is GRANTED. Plaintiff is awarded attorney's fees in the amount of \$7,456.19.

IT IS SO ORDERED this 29th day of January, 2018.



ROBIN J. CAUTHRON  
United States District Judge

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<sup>1</sup> This amount reflects the amount originally sought by Plaintiff and one hour for the reasonable time spent preparing the Reply to Defendant's Objection.